

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Section 125  
Title 14, California Code of Regulations  
Re: Commercial Take of Rock Crab

- I. Date of Initial Statement of Reasons: July 30, 2003
- II. Date of Pre-adoption Statement of Reasons: December 8, 2003
- III. Date of Amended Initial Statement of Reasons: February 2, 2004
- IV. Date of Amended Pre-Adoption Statement of Reasons: March 23, 2004
- V. Date of Final Statement of Reasons: June 30, 2004
- VI. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: October 3, 2003  
Location: Redding, California
  - (b) Discussion Hearing Date: December 5, 2003  
Location: Sacramento, California  
  
Date: February 6, 2004  
Location: Long Beach, California  
  
Date: May 4, 2004  
Location: San Diego, California
  - (c) Adoption Hearing: Date: June 24, 2004  
Location: Crescent City, California
- VII. Update: No changes were made to the originally proposed language of the February 2, 2004 Amended Initial Statement of Reasons. However, during the public review period it was brought to the Department's attention that the titles on the two commercial rock crab catch tables found on pages five and six in the Informative Digest/Policy Statement Overview were incorrectly switched. An editorial modification to the Informative Digest/Policy Statement corrected this technical error.

**Following the receipt of public comment and discussion of the regulations, the Commission adopted the proposed regulations that establish a northern and southern commercial rock crab trap permit and add Section 125 to Title 14, California Code of Regulations. The Commission also adopted the following options recommended by Department.**

**Landing Requirements (southern rock crab trap permit): A minimum 500 pounds of rock crab cumulatively landed south of Lopez Point utilizing trap gear in the 1998 through 2003 time period is required. Holders of a Nearshore Fishery Permit and trap endorsement are exempt from this requirement.**

**Control Date (southern rock crab trap permit): A control date of January 1, 2003 is established for the purpose of considering a future restricted access southern rock crab trap fishery.**

**Permit Fee (northern and southern rock crab trap permit): \$250.00**

**In addition, minor editorial changes were made to the regulatory language for clarity and consistency.**

- VIII. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Please see [Updated Comment Table 1](#) (attached) which reflects all comments received during the notice period.

- IX. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

- X. Location of Department Files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

- XI. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

A restricted access program with transferable permits was proposed by a small group of rock crab trap fishermen from southern California and

considered by the Department. They proposed a moratorium on new rock crab permits and a 1,000-pound landing requirement during the five years prior to 2003 in order to qualify for a permit. According to Department commercial rock crab trap landing data, approximately 168 individuals would qualify for a statewide rock crab trap permit under this alternative, with the majority of these individuals making landings in the Morro Bay, Santa Barbara, Los Angeles, and San Diego port areas. The Department does not want to develop a restricted access fishery without statewide industry participation and a full analysis of capacity goal and existing data.

(b) No Change Alternative:

If a permit program is not adopted for the rock crab trap fishery and fishing effort increases, then the harvest levels may not be sustainable. Without a restricted access permit program in the southern area, it is likely that fishing effort for rock crab in the southern area will continue to increase. The rock crab trap fishery is one of the few remaining open access fisheries in California, and, as such, will continue to attract new participants. In addition, effort from current participants is likely to increase as other fisheries institute restricted access programs or as quotas and seasons in other fisheries become more restrictive. A change in market conditions could greatly increase effort in northern ports, and a permit program provides the tools for taking appropriate management actions to ensure a sustainable rock crab trap fishery in the northern area.

Not creating northern and southern permits for this fishery means the Department must continue to rely on landings to determine the number of actual participants. Landings data alone do not provide accurate information about how many fishermen may be interested in pursuing the fishery full-time or part-time, or which landings of rock crab are incidental landings made while fishing for another target species. A \$35.00 general trap permit is the current requirement to trap rock crab. Although it identifies the gear type the fisherman intends to use, it does not identify the target species. The existing trap permit fee and landing tax do not provide adequate reimbursement for the expenditures required to adequately protect and maintain a marine resource and associated fishery.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

## XII. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Each permittee, buyer, and processor is considered a small business. The proposed permit program would cause some fishermen who have participated in the fishery in the past on a limited and sporadic level to lose some potential income if the initial issuance criteria selected requires a level of prior participation that has not been met. As the ex-vessel value of rock crab is \$1.30 to \$2.00 per pound, with prior catch history of 1,000 pounds over the five year window period, a maximum future loss might be estimated at between \$1,300 and \$2,000 per person over a five-year time period if that individual was to repeat the prior performance level and the Commission were to select a minimum catch history of 1,000 pounds for initial permit issuance. It is thought that since these individuals do not derive a significant portion of their income from this fishery, the economic impact would not be significant to those that may not qualify for initial permit issuance.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:

Each individual who seeks to purchase a southern rock crab trap permit and meets the selected initial issuance criteria may purchase a permit at a cost of [\$50 - \$250]. The northern permit may be purchased at a cost of [\$50 - \$250]. The permit may be renewed annually at the selected fee level. This funding is needed to offset program costs, including funds needed to implement the initial permit program, track landings, enforce the new regulations, staff appeal hearings, review the program and develop any additional modifications to the program or develop other management strategies that may be needed once the program is implemented. See Section XII (a) for additional information.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Under the proposed regulations the Department of Fish and Game will collect new permit fees to offset increased costs of administering the Rock Crab Permit program, no fiscal impacts on other

State agencies or Programs are anticipated. See Section XII(a), for details on implementation and management costs.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

### Updated Informative Digest/Policy Statement Overview

A person must have a commercial fishing license, a general trap permit, and use a vessel that is commercially registered to participate in the commercial rock crab trap fishery. The proposed regulatory action would create a northern and southern regional rock crab trap permit requirement beginning April 1, 2005 with the north/south boundary located at Lopez Point (Lat. 36° N), Monterey County. It also would establish eligibility requirements for obtaining a northern or southern rock crab trap permit, and the permit renewal process. Possession of a valid 2005-2006 Nearshore Fishery Permit and trap endorsement or minimum landing requirements and a permit moratorium are proposed for the southern region. Establishment of a control date is also proposed for the southern rock crab trap permit to provide for limits on future participation if necessary. The proposed northern rock crab trap permit would be a non-restrictive permit with no minimum landing requirements. Tidal Invertebrate permits issued pursuant to Section 123, Title 14, CCR, are not required for the commercial take of rock crab. A fee is proposed for each annual permit. Only one individual aboard a vessel trapping rock crab would be required to have the northern or southern rock crab trap permit in addition to the individual's general trap permit. Other licensed fishermen assisting in the take of rock crab would still need a commercial fishing license and a general trap permit. The permit application process and appeal and renewal processes are also specified in the proposed regulations.

The proposed regulations provide that, as a condition of the permit, a rock crab trap permittee must abide by all the all provisions of the Fish and Game Code and regulations of the Fish and Game Commission relating to crabs and traps. Pursuant to Fish and Game Code Section 9005, every trap or string of traps deployed for purposes of commercially harvesting rock crab is currently required to be marked with a buoy. The proposed regulations would prohibit the use of timed buoy release mechanisms capable of submerging a buoy attached to a trap, commonly known as "pop-ups," on buoy lines attached to rock crab traps. The proposed regulations would also prohibit the possession of pop-ups on any vessel while taking or attempting to take rock crab under the authority of a northern or southern rock crab trap permit.

The Department is proposing that a southern rock crab trap permit may be issued to any licensed commercial fisherman who has a valid 2005-2006 Nearshore Fishery Permit and trap endorsement, or a general trap permit, and who has landed south of Lopez Point (Lat. 36° N), Monterey County, a minimum number of pounds of rock crab during a specified time period as documented by fish landing receipts submitted to the department in the individual's name and commercial fishing license identification number. A range of minimum catch levels and time periods are provided from which the Commission may select. A

minimum of 0 to 2,000 pounds must have been landed in any single calendar year between (1990–1998) and (2002–2003), or the participant must have cumulatively landed a minimum of 0 to 2,000 pounds in the (1990–1998) through (2002– 2003) time period. Fishermen holding lobster permits taking rock crab incidentally during the lobster fishing season and in lobster trap gear would be exempt from the rock crab trap permit.

The range of 0-2000 pounds over the multi-year window period or in a single calendar year was chosen to provide the Commission alternatives from which a selection could be made on the composition of the future fleet once the entire industry has been notified and provided input. This range would allow the Commission to choose either a specific performance standard in a single year to measure participation, or alternatively, determine a level of participation over an extended recent time period. The tables below provide a summary of the range of options and anticipated qualifiers under various performance scenarios based on evaluation of the Department's commercial rock crab landings data.

The updated tables below reflect catch information only in southern port areas and include only landings where trap was recorded as the gear used. The summary tables presented in the July 30, 2003 Initial Statement of Reasons included all landings throughout the state, and thus no longer accurately reflect the number of anticipated qualifiers under the proposed regional program.

The titles in the rock crab catch tables below were incorrectly switched in the February 2, 2004 Amended Initial Statement of Reasons. Both titles have been modified in this document to correct this technical error.

Rock Crab Commercial Catches in a Single Year During 1998-2002  
Window Period from Morro Bay South

Five-Year Total Catch	Number of Individuals
2,000 pounds or more	126
1,000 pounds or more	141
750 pounds or more	148
500 pounds or more	172
250 pounds or more	207
200 pounds or more	221
100 pounds or more	251
50 pounds or more	278
1 pound or more	329

## Rock Crab Commercial Catches Over the 1998-2002 Window Period from Morro Bay South

Single-Year Catch	Number of Individuals
2,000 pounds or more	130
1,000 pounds or more	153
750 pounds or more	163
500 pounds or more	183
250 pounds or more	216
200 pounds or more	227
100 pounds or more	254
50 pounds or more	280
1 pound or more	329

Under the proposed regulations, applications for initial issuance of a southern rock crab trap permit must be received by the Department, or, if mailed, postmarked, on or before September 30, 2005. Applications for initial issuance of a southern rock crab trap permit received October 1 through October 31, 2005 shall be considered late and will be assessed a \$50 late fee. Applications received after October 31, 2005 will not be considered. Beginning with the 2006-2007 permit year, only persons who held a valid southern rock crab trap permit during the immediately preceding permit year are eligible to obtain a permit for the following permit year. Under the proposed regulations, applications for renewal of a southern rock crab trap permit must be received by the Department, or, if mailed, postmarked, on or before April 30 of each year. Applications for permit renewal of a southern rock crab trap permit received May 1 through May 31 shall be considered late and will be assessed a \$50 late fee. Applications received after May 31 shall not be considered, and the permit shall be cancelled and shall no longer be eligible for renewal in subsequent years. The proposed southern rock crab trap permit shall be revoked: a) if the person fails to renew the permit annually or renew his or her commercial fishing license issued pursuant to Fish and Game Code Section 7852; or b) for violation of any fish and game regulation pertaining to the take of rock crabs or violation of the terms or conditions of the permit.

The proposed regulations would provide that any applicant who is denied initial Issuance or renewal of a southern rock crab trap permit may appeal that denial to the Department in writing describing the basis for the appeal. If the Department denies the appeal, an appeal may be made to the Commission.

Applicants are required to submit a commercial southern rock crab trap permit application form DFG 1324(9/03) along with the required fee. The Department is proposing an annual fee for the southern rock crab trap permit of \$50 to \$250. Funding will be required in order to implement the proposed permit system, track fishery landings, enforce the new regulations, staff appeal hearings, and review the program to determine if any modifications are needed. Based on estimates provided by the Department's Marine Region, License and Revenue and

Enforcement Branches, the annual costs of the program may be estimated to be at least \$140,000 (including overhead and benefits).

Control date options from January 1, 2000 through March 31, 2003 were provided by the Department to the Commission to allow for industry input. Selecting a date of March 31, 2003 would give consideration to any fisherman who participated in the prior fishing season or earlier. Selecting a date of January 1, 2000 would acknowledge participation only by those in the fishery at or before the time that fishery representatives went to the Commission and formally requested that no new participants be allowed in the fishery.

The Department is proposing that a northern rock crab trap permit be may be issued to any licensed commercial fisherman who has a valid general trap permit that has not been suspended or revoked. The proposed northern rock crab trap permit would be a non-restrictive permit with no minimum landing requirements. Other licensed fishermen assisting in the take of rock crab using traps would still need a commercial fishing license and a general trap permit. The northern rock crab trap permit would be renewed annually by submitting application form DFG 1375 (8/03) and the annual fee for the northern rock crab trap permit of \$50 to \$250.

The Department is not proposing to publish the application forms (DFG 1324 and DFG 1374) in Title 14, CCR. The forms are lengthy and are frequently revised. Thus, it would be expensive and impractical to publish the forms in Title 14, CCR.

**On June 24, 2004 following the receipt of public comment and discussion of the regulations, the Commission voted to adopt the proposed regulations that establish a northern and southern commercial rock crab trap permit and add Section 125 to Title 14, California Code of Regulations. The Commission also adopted the following options recommended by Department.**

**Landing Requirements (southern rock crab trap permit): A minimum 500 pounds of rock crab cumulatively landed south of Lopez Point utilizing trap gear in the 1998 through 2003 time period. Holders of a Nearshore Fishery Permit and trap endorsement are exempt from this requirement.**

**Control Date (southern rock crab trap permit): A control date of January 1, 2003 is established for the purpose of considering a future restricted access southern rock crab trap fishery.**

**Permit Fee (northern and southern rock crab trap permit): \$250.00**

**In addition, minor editorial changes were made to the regulatory language for clarity and consistency.**



## Regulatory Language

Section 125, Title 14, CCR, is added to read:

### 125. Commercial Take of Rock Crab.

#### (a) Permit Required for Take Using Trap Gear.

Effective April 1, 2005, any person using traps to take, possess aboard a vessel, use as bait, or land rock crab (*Cancer antennarius*, *C. anthonyi*, or *C. productus*) for commercial purposes shall have a valid general trap permit issued pursuant to Fish and Game Code Section 9001 and either a northern or southern rock crab trap permit as described in this Section that has not been suspended or revoked.

(1) Presence of Permit Holder Aboard a Vessel. At least one rock crab trap permit holder shall be on board at all times when taking, possessing aboard a vessel, using as bait, or landing rock crab using trap gear. If a support vessel is used, a rock crab trap permit holder shall be on each vessel when taking rock crab.

(2) Crewmembers. Any licensed commercial fisherman working on a vessel utilizing commercial rock crab trap gear shall possess a valid general trap permit that has not been suspended or revoked. Crewmembers are not required to hold a rock crab trap permit.

(3) Fishermen holding lobster operator or crewmember permits issued pursuant to Fish and Game Code Section 8254 and Section 122, Title 14, CCR, taking rock crab incidentally as authorized in Fish and Game Code Section 8250.5 during the lobster fishing season specified in Fish and Game Code Section 8251 and in lobster trap gear as defined in Fish and Game Code Section 9010, are exempt from the rock crab trap permit requirements of this Section.

#### (b) Permit Conditions.

(1) Commercial rock crab trap permits are issued conditional upon all provisions of the Fish and Game Code and regulations of the Fish and Game Commission relating to crabs and traps.

(2) Pursuant to Fish and Game Code Section 9005, every trap or string of traps deployed for purposes of commercially harvesting rock crab shall be marked with a buoy.

(3) Timed buoy release mechanisms capable of submerging a buoy attached to a trap, commonly known as "pop-ups," shall not be used on buoy lines attached to rock crab traps, and shall not be possessed by any commercial rock crab trap permittee on any vessel while taking or attempting to take rock crab.

#### (c) Permit Areas.

(1) The northern rock crab trap permit is required only in ocean waters between 42°00' N. lat. (the Oregon/California border) and 36°00' N. lat. (at Lopez Point, Monterey County).

(2) The southern rock crab trap permit is required only in ocean waters south of 36°00' N. lat. (at Lopez Point, Monterey County).

#### (d) Northern Rock Crab Trap Permit Issuance.

(1) A person is eligible to purchase a northern rock crab trap permit if the individual meets all of the following criteria:

(A) the individual must be a licensed commercial fisherman;

(B) the individual must possess a valid general trap permit, issued pursuant to Fish and Game Code Section 9001, that has not been suspended or revoked; and  
(C) each year the individual must submit to the department a northern rock crab trap permit application form DFG 1375 (6/04), which is incorporated by reference herein, and the annual permit fee specified in subsection (f).

(e) Southern Rock Crab Trap Permit Issuance.

(1) Initial Permit Issuance. During the 2005-2006 permit year, any person is eligible for initial issuance of a southern rock crab trap permit if the individual meets all of the following criteria:

(A) the individual must be a licensed commercial fisherman; and

(B) the individual must possess a valid general trap permit, issued pursuant to Fish and Game Code Section 9001, that has not been suspended or revoked; and

(C) the individual must have landed a minimum of 500 pounds of rock crab utilizing trap gear between January 1, 1998 and December 31, 2003 at ports located within the southern permit area as defined in subsection (c), and as documented by fish landing receipts submitted to the department in the individual's name and commercial fishing license identification number pursuant to Fish and Game Code Section 8046.

Individuals who hold a Nearshore Fishery Trap Endorsement issued pursuant to Section 150.03, Title 14, CCR, are exempt from this eligibility requirement.

(D) Application Deadlines for Southern Rock Crab Trap Permit. A southern rock crab trap application form DFG 1324(6/04), which is incorporated by reference herein, and the annual permit fee specified in subsection (f) must be received by the department or, if mailed, must be postmarked on or before September 30, 2005. Applications for initial issuance of a southern rock crab trap permit received by the department, or, if mailed, postmarked from October 1 through October 31, 2005 will be assessed a \$50 late fee. Applications and permit fees for initial issuance of southern rock crab trap permits received, or, if mailed, postmarked after October 31, 2005 shall be returned to the applicant unissued.

(2) Southern Rock Crab Trap Permit Renewal. Southern rock crab trap permits must be renewed annually.

(A) Beginning with the 2006-2007 permit year, only persons who held a valid southern rock crab trap permit during the immediately preceding permit year are eligible to obtain a permit for the following permit year.

(B) All applications and permit fees for renewal of a southern rock crab trap permit shall be received by the department, or, if mailed, postmarked on or before April 30 of each year. Applications for renewal of a southern rock crab trap permit received by the department, or if mailed, postmarked from May 1 through May 31 will be assessed a \$50 late fee. Applications for renewal of a southern rock crab trap permit received or postmarked after May 31 shall be returned to the applicant unissued.

(f) Fees.

(1) Northern rock crab trap permit. The department shall charge an annual fee of two hundred and fifty dollars (\$250.00).

(2) Southern rock crab trap permit. The department shall charge an annual fee of two hundred and fifty dollars (\$250.00).

(g) Permit Revocation. Pursuant to Fish and Game Code Section 1054, a rock crab trap permit shall be revoked if the applicant or permittee submits false information for the purposes of obtaining or renewing a rock crab trap permit.

(h) Appeals.

(1) Southern Rock Crab Trap Permit Initial Issuance Appeals. Any applicant who is denied initial issuance of a southern rock crab trap permit for any reason by the department may appeal that denial to the commission in writing, describing the basis for the appeal. The appeal shall be received by the commission or, if mailed, postmarked on or before March 31, 2006.

(2) Southern Rock Crab Trap Renewal Appeals. Any applicant who is denied renewal of a southern rock crab trap permit for any reason may appeal that denial to the department in writing describing the basis for the appeal. The appeal shall be received or, if mailed, postmarked no later than March 31 following the permit year in which the applicant last held a valid southern rock crab trap permit. The appeal shall be reviewed and decided by the department. The decision of the department may be appealed in writing to the commission within 60 days of the date of the department's decision.

(i) Restricted Access.

A control date of January 1, 2003 is established for the purpose of considering a future restricted access southern rock crab trap fishery. Landings on or after this date may not apply toward a permit in a future restricted access program for the southern rock crab trap fishery if one is developed.

(j) Tidal Invertebrate permits issued pursuant to Section 123, Title 14, CCR, are not required for the commercial take of rock crab.

NOTE:

Authority cited: Sections 1050 and 8282, Fish and Game Code.

Reference: Sections 1050, 8250.5, 8282, 8284, 9000, 9001, 9002, 9005, 9006, and 9011, Fish and Game Code.